UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DOLLAR THRIFTY AUTOMOTIVE GROUP, Employer, and COMMUNICATIONS WORKERS OF AMERICA, LOCAL 7777, Union.	Case No. 27-CA-173054

POST-HEARING BRIEF OF DOLLAR THRIFTY AUTOMOTIVE GROUP

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PRELIMINARY STATEMENT

The employer, Dollar Thrifty Automotive Group ("Dollar Thrifty," the "Company," or "Respondent") submits this post-hearing brief in opposition to the General Counsel's Complaint. For the reasons set forth below, Dollar Thrifty respectfully contends that the Administrative Law Judge should dismiss the Complaint in its entirety. Under established Board precedent, which requires that the validity of an employer's rules be judged by reading the rules in context and in their entirety, the challenged rules may not reasonably be read by employees as restricting their rights under the Act. While two rules prohibiting solicitation or distribution of literature arguably could be read to violate the Act, the record contains no evidence to support the claim that those rules were "maintained" within the six-month period preceding the filing of the charge. As to those two rules, the evidence shows merely that during an unrelated grievance meeting and in response to the Charging Party's request, Dollar Thrifty provided copies of historical documents from an employee's personnel file to the Charging Party.

To the extent that the Administrative Law Judge believes that the General Counsel's selective editing and distorted emphasis creates any ambiguity as to the lawfulness of the challenged rules, Dollar Thrifty respectfully contends that the time has come for the Board and the Courts to re-examine the current legal standard. That standard not only requires employers to ignore their concomitant obligations under multiple federal and state statutes, but also fails because it provides no meaningful guidance for employers to navigate the complexity of the modern workplace. The General Counsel's own Complaint demonstrates the impossibility of this task. While the General Counsel alleges that certain language violates the Act, the General Counsel completely ignores other nearly identical language elsewhere – showing that even the General Counsel, a supposed "expert" in interpreting and enforcing the Act, cannot consistently apply the current legal standard under the only statute he has a responsibility to enforce. Dollar

Thrifty does not mean to disparage his efforts in this regard. On the contrary, while laudable in intent, the failure to be able to distinguish between the lawful and unlawful only demonstrates that the vast majority of employers – especially those which do not have experienced legal professionals at their beck and call – face an impossible burden. Nor does the current standard provide any meaningful guidance for employees to gauge the appropriateness of their own actions.

Dollar Thrifty respectfully contends that the current standard has turned the adoption of employment rules, regulations, policies, and handbooks into a Talmudic exercise which evaluates "magic words" and form over substance. Left unremedied, the Board's standard threatens to overwhelm a system already stretched to the breaking point.

For these reasons, which are articulated fully below, the Complaint should be dismissed in its entirety.

STATEMENT OF PROCEEDINGS

Upon an April 1, 2016 charge filed by Communications Workers of America, Local 777 (the "Charging Party"), on June 30, 2016, the General Counsel issued a Complaint and notice of hearing challenging 15 rules allegedly maintained by Dollar Thrifty during the Section 10(b) period. (G.C. Ex. 1(a), (d).)[1] On July 28, 2016, Dollar Thrifty filed its answer and notice of defenses. (G.C. Ex. 1(f).) On August 26, 2016, two business days before trial, the General Counsel serve a Notice of Intent to Amend the Complaint to allege four additional rules violated the Act. (G.C. Ex. 2.) The case was tried before Administrative Law Judge Amita Baman Tracy on August 29, 2016. Following the hearing, during which all parties were afforded the

[1] The following references are used throughout this brief: "Tr. __" for transcript page(s.); "R. Ex. __" for Dollar Thrifty's exhibit; "G.C. Ex. __" for General Counsel's exhibit; and "ALJ Ex. __" for Administrative Law Judge's exhibit.

opportunity to submit evidence and call or cross-examine witnesses, the Administrative Law Judge set an October 4, 2016 deadline for the filing of briefs.

STATEMENT OF FACTS

Dollar Thrifty respectfully contends that the evidence shows beyond cavil that the challenged rules do not violate the Act. Dollar Thrifty, a sophisticated employer and part of the global Hertz corporate family of rental car brands, seeks to carefully balance the rights of its employees with the myriad of conflicting and ever-changing federal, state, and international legal standards governing its operations.

A. Background of the Hertz Corporation and Dollar Thrifty Brands

Recognized as the largest airport general use rental company on earth, The Hertz Corporation ("Hertz"), a publicly traded Fortune 50 Corporation, operates under the Hertz, Dollar, Thrifty, and Firefly car rental brands. (R. Ex. 13, Annual Report, at 1, 3; Tr. 102.) Hertz offers multiple brands in order to provide customers a full range of rental services with different price points, levels of service, offerings and products. (*Id.* at 2, 4.) Each brand generally maintains separate airport counters, reservation systems, marketing approaches and strategies, and all other customer contact activities. (*Id.* at 4.)

The most recognized brand, Hertz, its top tier, offers premium services to clients. (*Id.*) The Dollar brand prides itself as being the "go-to choice" for the discerning value seeker with elevated expectations. (*Id.*) The Dollar brand's main focus is serving the airport vehicle rental market, which is comprised of business and leisure travelers. (*Id.*) The majority of its locations are on or near airport facilities. (*Id.*) Dollar operates primarily through company-owned locations in the United States and Canada, and also licenses to independent franchisees which operate under the Dollar brand system. (*Id.*) Recently, Dollar has been expanding internationally, primarily in Europe. (*Id.*)

The Thrifty brand, which is integrated with Dollar, prides itself for its focus on providing value and exceptional service for vacationers and tourists. (*Id.*) Thrifty serves both on airport and off airport markets through company-owned locations in the United States and Canada and licenses to independent franchisees which operate as part of the Thrifty brand system. (*Id.*) As with Dollar, Thrifty has been expanding its brand internationally. (*Id.*)

Collectively, Hertz owns, manages and operates over 9,900 corporate and franchisee locations in North America, Europe, Latin America, Africa, Asia, Australia, the Middle East and New Zealand. (R. Ex. 13, at 1; *see also* "About Hertz" from its website, http://ir.hertz.com/company-overview.) The Dollar and Thrifty brands manage over 1,300 corporate and franchisee locations in more than 70 countries, and maintain a presence in every one of the 50 United States. (R. Ex. 13, at 1; Tr. 101.)

Hertz operates over 1,600 airport rental locations in the United States and approximately 1,320 airport rental locations internationally. (R. Ex. 13, Annual Report, at 4.) Hertz' international car rental operations maintain company-operated locations in Australia, Belgium, Brazil, Canada, the Czech Republic, France, Germany, Italy, Luxembourg, the Netherlands, New Zealand, Puerto Rico, Slovakia, Spain, the United Kingdom and the United States Virgin Islands. (*Id.*)

As noted, each Dollar and Thrifty brands both accept car rental reservations separately through independently operated internet sites. (*Id.* at 6.) In addition, customers may secure rental reservations through third-parties such as travel agents or third-party travel websites. (*Id.*) In many of those cases, the travel agent or website will utilize a third-party operated computerized reservation system, also known as a Global Distribution System ("GDS") to contact the particular brand and make the reservation. (*Id.*) In major countries, including the

United States and all other countries with company-operated locations, customers may also reserve cars for rentals through local, national, or toll-free telephone reservations centers, directly through rental locations or, in the case of replacement rentals, through proprietary automated systems serving the insurance industry. (*Id.*) Additionally, all brands accept reservations for rentals worldwide through their websites and through smartphone apps for both the Dollar and Thrifty brands. (*Id.*)

In essence, the seamless integration of the customer experience through technology and individual communication remains an essential component of the Hertz business model, both in the United States and worldwide.

B. In its Day-to-Day Operations, the Hertz Corporation and Dollar Thrifty Collect a Vast Amount of Confidential Data Regarding Employees and Customers

As of December 31, 2015, Hertz employed approximately 30,000 employees, of which 23,000 were employed in the United States and 7,000 were employed in foreign countries. (*Id.* at 16.) As noted, in the United States, Hertz and Dollar Thrifty operate locations and employ employees in all 50 states. (Tr. 101.)

Through each of its brands, the Company regularly possesses, stores, and handles non-public information concerning uncounted individuals and businesses, including both credit and debit card information, drivers and other' license numbers, contact information, and other sensitive and confidential personal information. (R. Ex. 13, Annual Report, at 25.) In addition, customers regularly transmit confidential information to Hertz via the internet and through other electronic means. (*Id.*)

With respect to their employees, Hertz and Dollar Thrifty collect and maintain in various electronic databases highly confidential and personally identifiable information, including but not limited to, information regarding criminal convictions and incarcerations, drug test results,

educational records, medical information and data (including medical information regarding disabilities and illnesses), and financial data (including bank account numbers and information regarding wage garnishments). (Tr. 53, 55-56, 58, 61.) Furthermore, on a case by case basis, the Company will also have access to and preserve information concerning domestic violence and abuse allegations, orders of protection, criminal investigations initiated by law enforcement personnel, Company confidential investigations, and other workplace investigations. (*Id.* at 59, 63-65.) Indeed, in some cases, managers will have access to highly inflammatory information regarding employees. For example, one manager testified that during her employment with the Company, she was forced to address issues associated with the suicide of an employee on Company property, a highly confidential matter not generally known to either the public or other employees. (*Id.* at 64.) This manager also testified that during and in connection with her employment, she has been involved with employee sexual harassment and other investigations which were literally "too many to count." (*Id.* at 65-66.)

The evidence further shows that employees often transfer from location to location. For example, Erik Hogan, the General Manager of the Denver International Airport locations for Hertz, Dollar and Thrifty, previously worked as General Manager of the Hertz Houston Airport location, Area Manager for Hertz in Albuquerque, New Mexico, and Hertz City Operations Manager at the Denver Airport. (*Id.* at 99-100.)

C. Background on the Denver Airport Dollar Thrifty Location

The Dollar and Thrifty brands maintain rental car counters at the Denver Airport. (Tr. 49.) In her role as Human Resources Business Partner, Caralyn Lantz testified that she not only supported the Denver Airport location, but also all locations within the states of Colorado, Utah, Wyoming, Idaho and Montana. (*Id.* at 44-45.) Over 720 employees work within this region alone. (*Id.* at 45.) Within the region supported by Ms. Lantz, Hertz and/or Dollar Thrifty have

established bargaining relationships with three (3) different labor organizations: the Charging Party in this matter, representing counter sales representatives of Dollar Thrifty at the Denver Airport, along with bargaining units represented by Teamsters Local 455 in Denver; and Teamsters Local 222 in St. Lake City, Utah. (*Id.* at 47.)

Because Dollar Thrifty is located on the Denver Airport premises, it is subject to enhanced security measures. (*Id.* at 68.) Since Hertz maintains over 1,600 other locations at United States airports, it is reasonable to conclude that those locations are also subject to enhanced security measures. The Department of Homeland Security secures the perimeter of United States airports and, at least in Denver (and likely other locations), secures and maintains a perimeter fence directly across a street from Dollar and Thrifty. (*Id.* at 69.).

D. Dollar Thrifty Policies and Procedures

The evidence shows that in or about October 11, 2015, Dollar Thrifty employed Tesfaye Workneh at its Denver Airport location. In connection with his hiring, Dollar Thrifty gave Mr. Workneh (and Mr. Workneh acknowledges receipt of) its then standard onboarding package, consisting of thirty-eight (38) pages of materials, with internal references to additional materials, policies, and handbooks amounting to over 226 pages of written materials. The General Counsel alleges that some, but not all, of the policies set forth in the onboarding package or elsewhere are unlawful under current Labor Board standards.

The General Counsel alleges that certain aspects of the Company's "Company Information Security Statement and Confidentiality Agreement for Company Employees" ("Security Statement") violate the Act. Initially, it should be noted that through the artful omission of language the General Counsel wishes to ignore, the General Counsel claims that the Company's definition of "confidential information" violates the Act. For example, in paragraph

3(d) of the Complaint, the General Counsel alleges that the Company defines "personally identifiable information" to mean the following:

> . . . personally identifiable data (PID) . . . about . . . prospective, current or former employees . . . obtain[ed] in the course of Hertz business . . . [and as] . . . (iv) information . . . which would cause damage to the Company or . . . reputation if disclosed . . . ."

(G.C. Ex. 7 at 8; *see also* G.C. 1(d), at ¶3(d).) Not only does the General Counsel misquote the language, and by misquoting it alters its meaning, shockingly, the General Counsel entirely ignores the ***very next sentence***. In that sentence, the Security Statement unambiguously excludes from coverage the disclosure of any information for purposes protected by the Act.

> For the avoidance of doubt, notwithstanding any other provision of this agreement, ***it shall not be a violation of this Agreement for employees to discuss or communicate with others regarding matters related to their wages, hours, and other terms and conditions of employment***, provided they do not divulge private or confidential information that they accessed or obtained solely by virtue of the duties they perform for the Company. (Emphasis added.)

(Id.)

Because the General Counsel intentionally omits from the Complaint any reference to this express exclusion, the General Counsel alleges that the following additional provisions of the Security Statement violate the Act:

> I will not divulge Company Confidential Information to anyone, including without limitation Company employees, customer, contracted temporary workers or service providers, unless he or she requires the information to perform his or her services for the Company or as part of his or her contractual relationship with the Company. Communications of a sensitive or confidential nature (e.g., Company Confidential Information) or of any "Company Information" (as defined in Company Procedure W1-113, Acquisition and Disclosure of Company Information) should not be sent unless first reviewed and approved as required in Company Procedure W1-113, Acquisition and Disclosure of Company Information, and encrypted when necessary.

(G.C. Ex. 7 at 9; *see also* G.C. Ex. 1(d) at ¶3(k).)

> 4. Unless I have specific authorization, I will not attempt to gain access to Company Confidential Information, Company facilities or Company computing resources and I understand that such access is expressly prohibited.

(G.C. Ex. 7 at 9; *see also* G.C. Ex. 1(d) at ¶3(l).)

> 7. I will respect the privacy of other individuals. Except as required in the performance of the responsibilities of my position for the Company, ***I will not intentionally seek information on, or obtain copies of, or modify files, or other data, or passwords belonging to other individuals***. I will not intentionally represent myself as another individual unless explicitly authorized to do so by that individual. (Emphasis added.)

(G.C. Ex. 7 at 9; *see also* G.C. 1(d) at ¶3(m).)

> Visiting internet sites which contain . . . objectionable materials, sending or receiving, via the internet or email, any material that is . . . defamatory, or which is intended to annoy, offend . . . another person, or language including disparagement of others based on their . . . political belief.

(G.C. Ex. 7 at 11; *see also* G.C. Ex. 1(d) at ¶3(f).)

> Soliciting emails that are unrelated to business activities, or soliciting non-company business for personal gain or profit.

[G.C. Ex. 7 at 11; *see also* G.C. Ex. 1(d) at ¶3(g).)

> Other inappropriate uses of computing resources.

[G.C. Ex. 7 at 11; *see also* Ex. G.C. 1(d) at ¶3(n).)

> 23. I understand my obligation to protect Company Confidential Information and will comply with all of the Company policies and procedures regarding the handing of Company Confidential Information. In particular, if I become aware of any authorized access or use of Company Confidential Information or of any violations of Company information security policies and procedures, I will immediately notify the help desk, my immediate supervisor, or the Computer Emergency Response Team (CERT) . . . .

[G.C. Ex. 7 at 11-12; *see also* G.C. Ex. 1(d), at ¶3(e).)

With respect to a document entitled "Employee Rules and Regulations," the General Counsel alleges that two specific rules contained in that document violate the Act. Specifically, the General Counsel challenges a Company rule prohibiting the intimidating of others. Specifically, the rule provides:

> Although it is difficult to outline all major breaches of substandard performance that do not require progressive discipline, the following are many of the most standard serious breaches for which immediate discharge can be initiated.
>
> * * * *

9. Action on the part of any individual or group of employees to disrupt harmony, intimidate fellow employees, or to interfere with normal and efficient operations.

(G.C. Ex. 7 at 26-27; *see also* General Counsel 1(d) at ¶3(b).) The General Counsel also challenges a rule prohibiting employees from interfering with its operations. Specifically, the challenged rule prohibits:

26. Leading or participating in any activity that would interfere with the Employer's operation including, but not limited to, any unlawful strike.

(G.C. Ex. 7 at 28; *see also* General Counsel 1(d) at ¶3(c).)

Significantly, the General Counsel ***does not*** allege that the following rules (which are contained within the same document) amount to violations of the Act.

1. Reading of magazines or books, eating drinking while on duty except where required.

(G.C. Ex. 7 at 25.)

8. Use of company telephones, computers and other personal electronic devices for personal reasons while on Company time (i.e. MP3 players, IPODS, pages, audio/video devices, etc.), except in an emergency at which time you must notify a manager.

(*Id.*)

9. Horseplay, interference with other employees' work, or socializing while on company time.

(*Id.*)

10. Loitering on company property.

(*Id.*)

19. Misuse of electronic technology, including but not limited to internet use, in accordance with IT policy and precedent.

(*Id.* at 26.)

10. Gambling, fighting, attempting to fight, disorderly conduct, poor conduct that violates common decency (including obscene or abusive language) and other conduct tending to reflect unfavorably on the Company.

(G.C. Ex. 7 at 27.)

11. Harassment for sex, gender, age, race, color, national origin, disability, religion, sexual orientation, gender identity, marital or domestic partnership status, veteran or military status, genetic information, or other protected classification.

(*Id.*)

17. Use of Company equipment, facilities, or materials without prior managerial approval.

(*Id.*)

23. Indecent and/or immoral conduct while on duty or while on company property.

(G.C. Ex. 7 at 28.)

29. Failure to cooperate with Human Resources and/or management during an investigation.

(Id.)

30. Violation of or non-compliance with security regulations such as:

* * *

b. Entering or assisting any person to enter company premises or restricted area without proper identification.

(Id.)

31. Unauthorized duplication and/or destruction of company records or materials.

(Id.)

The General Counsel alleges that two provisions of the Company's policy on media relations violate the Act as well. Specifically, the General Counsel alleges the following statements unlawfully restrict employee rights.

It is the policy of The Hertz Corporation, and all of its global subsidiaries, to cooperate with the media and assist them by providing information about Company activities and subjects related to company business. However, employees are not authorized to speak to or otherwise engage with the media and the following guidelines must be adhered to:

> When the media contacts the company, the employee must explain that he/she wishes to be cooperative but is not authorized to disclose information. The employee must either contact Public Affairs and explain the request, or direct the media representative to contact the Public Affairs directly. Local management should also be notified.

* * * *

No further conversation of any kind or media interview should occur without prior knowledge and guidance of the Public Affairs Department.

* * * *

Public Statements and Published Articles

Public Statements refer to speeches, news releases, press conferences, interviews, postings on public web sites/message boards and news media inquiry responses concerning any aspect of Company's operations, business or policies. All Employees must adhere to the following policy:

Only Public Affairs may release or authorize the release of information to the media. All inquiries from the media must be referred to Public Affairs. Whether the media contacts Company or Company wishes to publicize its activities, all news releases must be authorized, in advance, by Public Affairs.

Under no circumstances may a Company employee approach the media to generate publicity about Company without the prior approval of Public Affairs. This includes news articles written by an employee where the employee's association with Company is disclosed or may be ascertained from the article.

When an employee receives approval to prepare an article for outside publication and if his/her affiliation with Company is disclosed or can be ascertainable or the subject relates to Company or its fields of interest, the article must be reviewed and approved by Public Affairs prior to submission.

All threats by current or former employees, their families and customers or other third parties to involve the media in any matter pertaining to Company should be communicated to Public Affairs and local management, with complete details about the surrounding circumstances.

G.C. 7, at 36-37; *see also* G.C. 1(d), ¶3(j).) As with other critical language, the General Counsel appears to intentionally omit the following language, contained in the same challenged policy:

> . . . If an employee is caught off guard by a film crew, they should respond with 'I am not authorized ***to speak on the Company's behalf, our corporate headquarters handles all media inquiries.*** I would be happy to refer you to our Public Relations Department.
>
> * * * *
>
> Note: Third parties (vendors, business partners, etc.) ***are not permitted to speak on the Company's behalf*** nor are they to issue press statements involving Company with Public Affairs' prior approval and involvement.

(G.C. Ex. 7 at 36-37, emphasis added.)

At the beginning of trial in the underlying case, the General Counsel moved to amend the Complaint to allege that the following provisions of the Dollar Thrifty Employee Handbook violated the Act:

> Formal pay policies have been developed for all pay actions within the Company. Questions regarding these policies should be forwarded to your supervisor or Human Resources.
>
> DTG strives to pay salaries and wages competitive with those in our community and industry. We consider your pay a confidential matter and ***encourage you*** to do the same. For more information on DTG's compensation program, please contact Human Resources.

(G.C. Ex. 2 at 1-2; *see also* G.C. Ex. 4 at 46.) (Emphasis added.)

> In your job, you. may have access to or be exposed to information regarding the Company. Each employee is prohibited from disclosing, directly or indirectly, to any unauthorized person (including other employees), business or other entity, or using, for the employee's own purposes, any confidential information. The protection of confidential business information and trade secrets is vital to the interests and the success of DTG. Such confidential information includes, but is not limited to, the following examples:
>
> • Compensation data . . . .

(G.C. Ex. 2 at 2; *see also* G.C. Ex. 4 at 27.)

> Certain employees of DTG are granted the privilege of accessing e-mail, voice mail and Internet via the Company's computers. ***When it becomes necessary to utilize e-mail, voice mail or Internet via the Company's computers for occasional and infrequent non-business use, good judgment must be exercised.*** Any inappropriate or prohibited Internet, voice mail or e-mail access or use may result in discipline up to and including termination from employment.
> DTG is dedicated to providing a work environment that is free from unlawful harassment. Any Internet access to content or materials which are of an offensive nature, including pornographic or obscene materials and materials that otherwise may reasonably be considered inappropriate, will be considered willful misconduct and will result in disciplinary action up to and including termination.
>
> Transmitting materials which are defamatory, discriminatory, threatening, profane, slanderous, libelous, harassing or otherwise offensive through the Company's e-mail or voice mail systems is also prohibited and will be cause for discipline, up to and including termination from employment. Materials covered by this restriction include documents, messages, jokes, images, cartoons, programs and software. All e-mail messages and

attachments, and voice mail messages whether business or personal in nature, are the property of the Company. Employees should expect that anything in an electronic file is always available for and subject to review by the Company.

(G.C. Ex. 2 at 2-3; *see also* G.C. Ex. 4 at 26.) (Emphasis added.)

> Employee participation in public and community activities is encouraged. However, Corporate Communications and Investor Relations have established excellent relations with the news media on a local, national and international basis. Because the image we portray to this critical audience is very important to our Company, Corporate Communications and Investor Relations must approve any interviews, speeches or articles requested by the media with respect to the Company and its business to assure that the views expressed are accurate, consistent and reflect well in the marketplace. If a member of the news media contacts you for information, always refer them to a member of Corporate Communications or Investor Relations.

(G.C. Ex. 2 at 3; *see also* G.C. Ex. 4 at 41.)

Once again, the General Counsel intentionally omitted the following language from the Employee Handbook.

> The policies, practices and benefits set forth in this Handbook are subject to applicable laws and regulations and may be applied differently in some states in order to comply with such laws. . . . To the extent there is any conflict between a policy of the Company and any material set forth in this Handbook, including any policy summary, the policy of the Company posted at www.dtgnet will control and prevail.

(G.C. Ex. 4 at 5.) Thus, the Employee Handbook expressly directs employees to the more specific policies which govern in the event of any conflict with the Handbook.

The evidence shows that Dollar Thrifty maintains these comprehensive policies and procedures, makes them available to all employees, and holds employees responsible for reviewing them. Among other things, the Company maintains a social media policy which provides, among other things:

> The Company takes no position on the decision of employees to start or maintain a blog or participate in other Social Media activities.
>
> * * * *
>
> 1. The Company respects the right of employees to write blogs and use Social Media sites and does not want to discourage employees from self-publishing and self-

expression. The Company also does not discriminate against employees who use Social Media for personal interests and affiliations or other lawful purposes.

* * * *

2. . . . . If you decide to post complaints or criticism, avoid using statements, photographs, video or audio that reasonably could be viewed as malicious, obscene, threatening or intimidating, that disparage customers, associates or suppliers, or that might constitute harassment or bullying. Examples of such conduct might include offensive posts meant to intentionally harm someone's reputation or posts that could contribute to a hostile working environment on the basis of race, sex, disability, religion or any other status protected by law or company procedure.

* * * *

5. ***Employees are not authorized to speak on behalf of the Company via Social Media. . . . . You therefore must make clear that you are not speaking on behalf of the Company and that the views expressed are your own and not those of the Company.***

* * * *

8. Due to certain governmental regulations, employees should avoid making any endorsements or testimonials about the Company or its products or services unless the employee's relationship to the Company is clearly and conspicuously disclosed.

* * * *

3. ***Nothing contained in this procedure shall be interpreted or applied in a way that interferes with the legal rights of employees to engage in Section 7 activities per the National Labor Relations Act.***

(R. Ex. 2 at 1-5, *emphasis added.*)

The Company also promulgated its "Standards of Business Conduct," a document cross-referenced in the Employee Handbook, The Code of Conduct provides, among other things:

Remember, no single document can cover all the situations that we may encounter throughout the course of our work.

* * *

Laws can be complex, and vary from one country to the next. This makes it all the more important that we familiarize ourselves with the laws and regulations that apply to our specific jobs.

(R. Ex. 4 at 2-3.) The Code goes on to provide detailed examples on an employee's obligations to protect confidential information from being disclosed to competitors, from pressuring co-workers to disclose confidential information about former employers which could provide a competitive advantage to the Company, and about the need to safeguard information belonging to third-parties. (*Id.* at 6-8.) To emphasize the importance of these values, the Code provides concrete examples of the types of situations in which confidential information could be compromised (by an HR manager leaving employee files unattended on a copy machine) or used in a manner which could constitute illegal insider trading (through an employee in HR using his knowledge to advise a family member whether to sell or hold Company stock). (*Id.* at 6-8, 10, 13 and 15.)

Additional policies which employees are required to review and with which they are required to become familiar include, Policy W1-46 on privacy (addressing the disclosure of personally identifiably information and noting that the Company does business in many countries and must comply with international legal standards regarding the disclosure of personally identifiable information); Policy W2-31, Disclosure of Employee Information (cautioning that with respect to employment verification, employee salary information cannot be disclosed without the consent of the employee, and that negative employment references or damaging information cannot be disclosed without the permission of Company officials), and Policy W2-37 regarding personnel records (expressly noting that some information even may not be disclosed to the specific employee, information such as salary increase projections, talent inventory, references, investigation files and planning data). (R. Ex. 11, 1, 13; R. Ex. 12 at 3, 6; R. Ex. 5 at 2-3.)

In addition to these policies, given the amount of data on customers and employees collected and stored by the Company, the Company maintains a comprehensive set of policies dealing with security and security breaches, access to computing resources and global information security. Among other things, these policies make clear that sensitive data can be compromised in many ways; the Company has committed itself to maintain the confidentiality and security of the data entrusted to it by customers, employees and third-parties; and ***every employee*** shares in the duty to maintain the confidentiality of this data. (*See generally* R. Ex. 4 6, 8, 9, and 10.)

Finally, the General Counsel alleges that the Company maintained an overbroad and unlawful no-solicitation, no-distribution policy. The evidence shows that in connection with a grievance filed by the Charging Party over an employee's pay, the Charging Party requested certain information from the employee's file. (Tr. 26.) In response to that request, the Company provided the Charging Party with certain documents admitted into evidence as General Counsel's Exhibit 2. On page 3 of that document, the following rule appears:

> 4. Soliciting, direct/indirect sale of any item, distributing and collecting any papers, materials or contributions on company premises or posting literature or other materials without Management authorization.
>
> * * * *
>
> Solicitation of an employee by another employee is prohibited while either the person doing the soliciting or the one being solicited is on his or her working time. Furthermore, the distribution of any material of any kind shall not be permitted in the workplace.
>
> * * * *
>
> Soliciting emails that are unrelated to business activities, or soliciting non-company business for personal gain or profit.
>
> * * * *

> Solicitation of an employee by another employee is prohibited while either the person doing the soliciting or the one being solicited is on his or her working time. Furthermore, the distribution of any material of any kind shall not be permitted in the workplace.

(G.C. Ex. 6 at 3, 18-19; *see also* G.C. Ex. 1(d) at ¶3(a), 3(i).) Significantly, a comparison of these rules with G.C. Ex. 7 quickly shows that the two documents are not the same in all respects, and are significantly different with respect to the language of these challenged rules. The no-solicitation, no-distribution rules contained in G.C. Ex. 7 (the onboarding document distributed to Mr. Workneh during the six-month Sec. 10(b) period), contains the following no-solicitation, no-distribution language:

> Distributing or posting literature or other materials in work areas. Soliciting or distributing/posting literature during the employee'[s] working time[.] (Working time does not include meal or designated break periods.)

(G.C. Ex. 7 at 26.) In addition, the Employee Handbook contains a policy outlining its rules with respect to employee and non-employee solicitations. That policy provides:

> Because DTG wishes to maintain a proper business environment and prevent interference with work and inconvenience to others, guidelines for solicitation are listed below:
>
> > Employees must have prior written approval of Human Resources or the city manager before posting a notice or other written solicited material on Company property;
> >
> > Employees are prohibited from circulating or distributing any written or electronically transmitted solicited material in working areas or during work time;
> >
> > Employees are prohibited from selling or attempting to sell goods on Company property during work time; and
> >
> > Individuals who are not employees of the Company are prohibited from distributing literature, selling merchandise, soliciting financial contributions or soliciting for any cause on Company property.

(G.C. Ex. 4 at 40-41.) The General Counsel does ***not*** allege these policies to be unlawful.[2]

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[2] The General Counsel does allege that a single no-solicitation, no-distribution rule contained in G.C. 7 violates the Act. See G.C. Ex. 7 at 11. As noted above, that rule is contained in the Security Statement, a document which contains an express disclaimer to the effect that nothing contained in the Security Statement should be interpreted to prevent employees from engaging in protected activity. (See G.C. Ex. 7 at 8.)

The record contains no evidence showing that Dollar Thrifty adopted any cited rule in response to union or protected activity, applied any rule in such a way as to deprive employees of their Section 7 rights, and were interpreted by any employee to restrict them in their ability to exercise their rights on Section 7 of the Act.

ARGUMENT

Dollar Thrifty respectfully contends that, when read in context and in their totality, the plain meaning of the challenged rules shows they comply with the Act. While two non-solicitation, no-distribution rules contained in G.C. Ex. 4 may be more problematic, the General Counsel has failed to show those rules were adopted, maintained or enforced during the Section 10(b) period. Finally, to the extent any of the challenged rules could arguably be read in the manner suggested by the General Counsel (Dollar Thrifty contends they cannot be so construed), the Board should revisit the *Lutheran Heritage* Standard for the reasons set out below.

A. UNDER CURRENT STANDARDS, DOLLAR THRIFTY'S RULES DO NOT VIOLATE THE ACT.

In determining whether the maintenance of a work rule violates Section 8(a)(1) of the Act, the Board has adopted the following currently applicable legal standard:

> [A]n employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. . . . In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. . . . Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule explicitly restricts activities protected by Section 7. If it does, we will find the rule unlawful.
>
> If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent on a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

Lutheran Heritage Village-Livonia, 343 NLRB 646 (2004).[3] In applying this standard, the Board has made clear that an employer's rules must be read in their totality and in context. *Id; see also Tradesman International*, 338 NLRB 460 (2002); *see also* General Counsel's Advice Memorandum 15-04.

Under the *Lutheran Heritage* Standard, Dollar Thrifty contends that its rules do not violate the Act.

With respect to the challenged rules which appear in the Security Statement,[4] the Security Statement expressly advises employees that, notwithstanding anything contained in it, the document cannot be read to prohibit employees from disseminating or disclosing information for purposes protected by the Act.

> For the avoidance of doubt, notwithstanding any other provision of this agreement, ***it shall not be a violation of this Agreement for employees to discuss or communicate with others regarding matters related to their wages, hours, and other terms and conditions of employment,*** provided they do not divulge private or confidential information that they accessed or obtained solely by virtue of the duties they perform for the Company" (emphasis added).

(G.C. Ex. 7 at 8, emphasis added.) By expressly incorporating the statutory protections contained in the Act, Dollar Thrifty has done precisely what the Board has called on all employers to do – draft its rules to make sure that the rules are read by employees consistent with the Act.

In addition, Dollar Thrifty has promulgated many other policies and rules all of which, when read together, clearly shows its attempt to balance the protected Section 7 rights of its employees with the need to maintain workplace discipline. For example, the Social Media policy expressly advises employees:

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[3] The General Counsel does not allege either that the challenged rules were adopted in response to protected activity or were applied in a manner to deprive employees of the right to engage in protected activity.

[4] See G.C. Ex. 7 at 8, 9, 11-12; G.C. 1(d), at ¶¶3(d), (e), (f), (g), (k), (l), (m), (n)).

> ***Nothing contained in this procedure shall be interpreted or applied in a way that interferes with the legal rights of employees to engage in Section 7 activities per the National Labor Relations Act.*** (Emphasis added.)

(R. Ex. 2 at 1-5.) The Code of Conduct provides, among other things:

> Remember, no single document can cover all the situations that we may encounter throughout the course of our work.
>
> * * *
>
> Laws can be complex, and vary from one country to the next. ***This makes it all the more important that we familiarize ourselves with the laws and regulations that apply to our specific jobs.*** (Emphasis added.)

(R. Ex. 4 at 2-3.) The Employee Handbook similarly advises employees:

> The policies, practices and benefits set forth in this Handbook are subject to applicable laws and regulations and may be applied differently in some states in order to comply with such laws. . . . To the extent there is any conflict between a policy of the Company and any material set forth in this Handbook, including any policy summary, the policy of the Company posted at www.dtgnet will control and prevail.

(G.C. Ex. 4 at 5.) Finally, throughout the policy statements and materials, Dollar Thrifty has done more than simply articulate a set of "rules" to follow. Rather, the Company attempted to educate its employees by providing real world examples of conduct, by employees and managers alike, which could conflict with the rights of others. Whether leaving confidential employee files unattended for others to see, or disclosing confidential information about an upcoming acquisition so a relative can decide whether to trade stock, or pressuring an employee to disclose the confidential information of a former employer and now competitor, the Company seeks to have its employees comply with the strict ethical, moral and legal obligations undertaken.

Furthermore, Dollar Thrifty's rules with respect to contacts with the media similarly make clear, when read in context, that Dollar Thrifty refers to contacts with the media where the speaker purports to be speaking ***on behalf of the Company***, rather than as an individual.

> . . . If an employee is caught off guard by a film crew, they should respond with 'I am not authorized ***to speak on the Company's behalf, our corporate headquarters handles all media inquiries.*** I would be happy to refer you to our Public Relations Department.
>
> * * * *
>
> Note: Third parties (vendors, business partners, etc.) ***are not permitted to speak on the Company's behalf*** nor are they to issue press statements involving Company with Public Affairs' prior approval and involvement. (Emphasis added.)

(G.C. Ex. 7 at 36-37.) The repeated references to the effect that, unless authorized, individuals cannot hold themselves out as speaking for the Company is implicit in every aspect of the challenged policy. Similarly, the Social Media policy makes crystal clear the Company's concern – preventing employees from holding themselves out as Company representatives – not in prohibiting employees from speaking as individuals.

> Employees are not authorized to speak on behalf of the Company via Social Media. . . . . You therefore must make clear that you are not speaking on behalf of the Company and that the views expressed are your own and not those of the Company.

(R. Ex. 4 at 2-3.)

Accordingly, when read in context, Dollar Thrifty contends its rules and policies do not violate the Act.

Dollar Thrifty anticipates that the General Counsel may argue its Security Statement violates the Act despite its disclaimers because the Security Statement excludes from protection the disclosure of information obtained as a result of an employee's duties. Dollar Thrifty contends that it may appropriately prohibit employees from using for their own purposes information regarding others obtained in the course of their employment. As the record shows, Dollar Thrifty employees have access to highly confidential and potentially harmful information about coworkers – credit and debit card information, criminal conviction information, ongoing criminal investigations, medical disabilities (including mental disabilities or handicaps), illnesses, or even suicidal behavior. While in theory one could envision a situation where that

information could be used to support "concerted" activity, no employee should be given the right to "hack" data belonging to others and use it for their own purposes. This Board has never permitted such a result and should not do so here. *Bethany Medical Center*, 328 NLRB 1094 (1999)(concerted activity not protected if unlawful, violent, in breach of contract, or otherwise indefensible). Dollar Thrifty respectfully contends that releasing the details of a co-workers on premises suicide or life-threatening medical condition, even if for purposes of organizing, would be "indefensible."

B. GENERAL COUNSEL'S ALLEGATION IN PARAGRAPH 3(a) OF THE COMPLAINT IS UNTIMELY UNDER SECTION 10(b) OF THE ACT.

The General Counsel alleges that certain no-solicitation, no-distribution rules contained in G.C. Ex. 6 violate the Act. (*See* G.C. Ex. 1(d), at ¶¶3(a), (i).) As shown below, Dollar Thrifty respectfully contends that the General Counsel has failed to show these rules were promulgated or maintained during the Section 10(b) period.

Settled law holds that Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." In order for a complaint to issue challenging the lawfulness of a work rule, the rule must have been (1) promulgated; (2) maintained; or (3) enforced during the 10(b) period. 1987 NLRB GCM LEXIS 149, *8; *Alamo Cement Co.* 277 N.L.R.B. 1031, 1037 (1985); *see also Pepsi-Cola Bottling Co. of Los Angeles*, 211 NLRB 870 (1974).

Here, the General Counsel has offered no evidence that ***any of the rules*** contained in G.C. 6 were maintained during the Section 10(b) period. The only testimony offered on this point was the vague and unsubstantiated testimony of the Charging Party's representative, Debbie Media. Ms. Medina testified that during an unrelated grievance meeting over the pay treatment of a bargaining unit employee, she requested and Dollar Thrifty provided copies of

materials from the employee's personnel file. Those documents contained the challenged rules. There is absolutely no evidence that the Company ever claimed the no-solicitation, no-distribution rule was still in effect. Indeed, the Company seemingly never referenced any specific policy at all.

Furthermore, as to the challenged no-solicitation, no-distribution rules, the evidence clearly shows that Dollar Thrifty maintained a lawful no-solicitation, no-distribution policy during the Section 10(b) period. In contrast to G.C. Ex. 6, G.C. Ex. 7 contains very different language on this topic – language which the General Counsel has elected not to challenge because he has considered it to be lawful.

Because the General Counsel has failed to show that the challenged no-solicitation, no distribution rule ever was maintained during the six-month period preceding the filing of the charge, these allegations similarly fail.

C. THE BOARD SHOULD OVERRULE THE CURRENT *LUTHERAN HERITAGE* STANDARD, AS IT REMAINS UNWORKABLE AND CONFLICTS WITH FEDERAL AND STATE STATUTES IMPOSING ADDITIONAL OBLIGATIONS ON EMPLOYERS

Over the past two decades the Board has developed a body of law around work rules that have served to make the standard of lawfulness more opaque. *See Lafayette Park Hotel*, 326 NLRB 824, 826 (1998) (finding employees would not reasonably read rule requiring employees to keep confidential private information, including guest information, trade secrets, contracts with suppliers as chilling employees exercise of Section 7 rights); *Cintas Corp.*, 344 NLRB 943 (2005) *enfd.* 42 F.3d 463 (D.C. Cir. 2007) (unlawful rule required employees to maintain "confidentiality of any information concerning the Company, its business plans, its partners (employees), new business efforts, customers, accounting and financial matters."); *IRIS U.S.A. Inc.*, 336 NLRB 1013, 1013 fn. 1, 1015, 1018 (2001) (concluding that a rule was unlawful

because it stated all information about "employees is strictly confidential"); *University Medical Center*, 335 NLRB 1318 (2001) (finding unlawful a rule prohibiting "release or disclosure of confidential information concerning patients or employees."); and *Flamingo Hilton-Laughlin*, 330 NLRB 287 (1999) (finding unlawful conduct rules that prohibited employees from revealing confidential information about customers, hotel business, or fellow employees.).

Further compounding the opacity of work rules determinations is the General Counsel's Advice Memorandum 15-04, which provides examples and explanations of unlawful and lawful work rules. The General Counsel stresses in the Memorandum that context is key in determining the lawfulness of rules and that a rule that might otherwise be unlawful can be found lawful if, "in context employees would not reasonably understand the rule to prohibit Section 7-protected activity." (Memorandum 15-04 at 6.)

This focus on "context" by the General Counsel presents two problems for employers. First, the Board has not articulated such a standard with respect to the "context" of rules. Although it will not read the words in policies "in isolation," it does not take such a sweeping view of context. Second, the context of any given policy is tremendously fact-specific and does not lend itself to standardizing – how is Dollar Thrifty supposed to compare the context of its policies with that of another employer? Because the General Counsel looks to more than the words of a given rule in determining whether a policy is lawful, and the Board has not engaged in such an analysis, employers are left with no reliable gauge in drafting rules and policies to maintain order in their businesses, particularly when rules do not expressly prohibit Section 7 activity.

The General Counsel's Complaint in this very case highlights the dilemma. The General Counsel chose to challenge the rules contained in the Dollar Thrifty "Security Statement," even

though that Security Statement contained an explicit disclaimer excluding from coverage the disclosure of any information disclosed in the context of Section 7 protected activity. Yet, the General Counsel has elected not to challenge almost identical language contained in other materials.

If the General Counsel cannot consistently determine whether to issue a complaint or not, one must wonder how an employer – without the vast resources of the entire Federal government – or the bureaucracy of the National Labor Relations Board – can determine the lawfulness of its rules. Dollar Thrifty acknowledges the Administrative Law Judge's decision in *Brookdale Senior Living*, 28-CA-134729, 2015 LRRM 173145 (2015), in which a "harmony" policy was found to be unlawful, but a "confidentiality" policy was found to be lawful. Dollar Thrifty contends that the careful analysis in that case proves the point. Most employers do not have the luxury or the resources to invest countless hours to draft, revise, update, conform, modify and supplement its policies, procedures and rules against a constantly changing, challenging landscape. When multiple labor professionals with extensive experience cannot agree on the limits of the standard, few employers or employees will be able to do so. Thus, the current standard does not provide meaningful guidance.

Nor does the current legal standard recognize or respect the obligations employers have to comply with other Federal and state statutes. For example, currently, no universal definition exists regarding the definition of "personally identifiable information" ("PII"). Each federal agency has its own definition. *See* Public Opinion of the Federal Trade Commission, *LabMD, Inc.* Docket No. 9357 (2016); Comment of the Staff of the Bureau of Consumer Protection of the Federal Trade Commission to the Federal Communications Commission, WC Docket No. 16-106 (May 27, 2016). Furthermore, over 45 states regulate the disclosure of PII and they all seem

to have their own definition of the term and the circumstances under which the disclosure if PII must be disclosed. *See* Alaska Stat. § 45.48.010 et seq.; Alaska Stat. § 45-48.010 et seq.; Ariz. Rev. Stat. Ann. § 44-7501; Ariz. Rev. Stat. Ann. § 44-1373; Ark. Code Ann. § 4-110-101 et seq.; Ark. Code Ann. § 4-86-107; Cal. Civ. Code § 1798.80 et seq. Health & Safety Code § 1280.15; Cal. Civ. Code § 1798.85 et seq. Cal. Lab. Code § 226; Colo. Rev. Stat. Ann. § 6-1-716; Colo. Rev. Stat. Ann. § 6-1-715; Conn. Gen. Stat. § 36a-701b; Conn. Gen. Stat. § 42-470; Conn. Gen. Stat. § 42-471; Del. Code Ann. Tit. 6 § 12B-101 et seq.; Del. Code Ann. Tit. 18 § 3353 and § 3569; D.C. Code § 28-3851 et seq.; Fla. Stat. 501.171; GA Code Ann. § 10-1-911 et seq.; Ga. Code Ann. § 10-1-393.8; Ga. Code Ann. § 10-15-1 et seq.; 9 GCA § 48.10 et seq.; Idaho Code § 28-51-104 et seq.; Idaho Code § 28-52-108; 815 Ill. Comp. Stat. Ann. 530/1 et seq.; 815 Ill. Comp. Stat. Ann. § 505/2RR; § 505/2QQ; § 530/01 et seq.; 740 Ill. Comp. Stat. Ann. 14/1; Ind. Code § 24-4.9-1-1 et seq.; Iowa Code. § 715C.1 et seq.; Kan. Stat. Ann. § 50-7a01 et seq.; Kan. Stat. Ann. § 75-3520; La. Rev. Stat. Ann. § 51:3071 et seq.; Md. Code Comm. Law § 14-3501 et seq.; Md. Code Ann. Com. Law § 14-3401 et seq.; Md. Code Ann. Labor and Employment § 3-502(d); Mass. Gen. Laws Ch. 93H §1 et seq.; Me. Rev. Stat. Ann. Tit. 10, § 210-B-1346 et seq.; Me. Rev. Stat. Ann. Tit. 10 § 208-A-1271 et seq.; M.C.L.A. 445.61 et seq.; M.C.L.A. § 445.81 et seq.; Minn. Stat. § 325E.61; Minn. Stat. § 325E.59; Minn. Stat. § 325E.64; Mo. Rev. Stat. § 407.1500; Mo. Rev. Stat. § 407.1355; Mont. Code Ann. § 30-14-1704; Mont. Code Ann. § 30-14-1701 et seq.; Neb. Rev. Stat. § 87-801 et seq.; Neb. Rev. Stat. § 48-237; Nev. Rev. Stat. 603A.010 et seq.; Nev. Rev. Stat. § 239B.030; Nev. Rev. Stat. § 603A.215 et seq.; N.H. Rev. Stat. Ann. § 359-C:19 et seq.; § 332-I:5; N.J. Stat. Ann. § 56-8-161 et seq.; N.M. Stat. Ann. § 57-12B-1 et seq.; N.Y. Gen. Bus. Law § 899-aa; N.Y. Gen. Bus. Law § 399-ddd; N.Y. Labor Law § 203-d; N.C. Gen. Stat. § 75-60 et seq.; N.D. Cent. Code § 51-30-01 et seq.; Ohio Rev. Cod Ann.

§ 1349.19; Ok. Stat. § 24-161 et seq.; Ok. Stat. § 40-173.1; O.R.S. § 646A.600 et seq.; 73 PA Stat. Ann. § 2301 et seq.; 74 PA Stat. Ann. § 201 et seq.; 10 L.P.R.A. § 4051 et seq.; 42. R.I. Gen Laws § 6-48-8; §6-13-15, 6-13-17 and 6-13-19; 42 R.I. Gen. Laws § 11-49.3-1 et seq.; S.C. Code Ann. § 39-1-90; S.C. Code Ann. § 37-20-180; Tenn. Code Ann. § 47-18-2101 et seq.; Tex. Bus. & Comm. Code Ann. § 521.001 et seq.; Tex. Bus. & Comm. Code Ann. § 501.001 et seq.; Utah Code Ann. § 13-44-101 et seq.; Utah Code Ann. § 13-45-301; Va. Code Ann. § 18-2-186.6; § 32-1-127.1; Va. Code Ann. § 59.1-443.2; VT Stat. Ann. Tit. 9 § 2430 et seq.; V.I. Code Tit. 14 § 2200 et seq.; Wash. Rev. Code § 19.255.010 et seq.; W. Va. Code, § 46A-2A-101 et seq.; W.S.A. 134.98; Wyo. Stat. Ann. 40-12-501 et seq.

Furthermore, two states make unlawful so-called workplace "bullying," and an additional 20 others are considering legislation to do so. *See* Cal. Gov. Code §12950.1 and Tenn. Code Ann. § 50-1-501 et seq.; *see also* ALJ Ex. 2 at tabs 6-26.)[5] These anti-bullying statutes expand the obligation of an employer to take action to make sure no employee engages in "bullying" behavior, even if the motivation for the bullying behavior involved organizing.

If Dollar Thrifty cannot implement and maintain work rules that broadly prohibit the revelation of PII and broad rules that seek to prevent workplace violence and bullying, it cannot satisfy its many other legal obligations. Given that it has long since been established that employers have the right to "maintain discipline in their establishments," and that such discipline is essential in a balanced society; *Republic Aviation v. NLRB*, 324 U.S. 793, 797-798 (1945); such a conclusion cannot be what is contemplated under the Act.

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[5] Of note is that the United States Department of Labor's "Workplace Violence Program" identifies as a warning sign of workplace violence "verbal abuse including offensive, profane and vulgar language; and threats (direct or indirect), whether made in person or through letters, phone calls, or electronic mail." Available at: https://www.dol.gov/oasam/hrc/policies/dol-workplace-violence-program.htm.

CONCLUSION

Because the allegations of the General Counsel's Complaint are unsupported and the Board's standard is not viable, Dollar Thrifty respectfully requests that the Complaint be dismissed.

Dated: October 4, 2016

DOLLAR THRIFTY AUTOMOTIVE GROUP

By: _____
MATTHEW T. MIKLAVE
SUSAN MASTERS

CERTIFICATION

I hereby certify that a true copy of the foregoing POST-HEARING BRIEF OF DOLLAR THRIFTY AUTOMOTIVE GROUP was served on the interested parties in this action on this 4th day of October 2016, to the following:

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